

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	MM Docket No. 97-234
of the Communications Act	)	
— Competitive Bidding for Commercial	)	
Broadcast and Instructional Television	)	
Fixed Service Licenses	)	
	)	
Reexamination of the Policy Statement	)	GC Docket No. 92-52
on Comparative Broadcast Hearings	)	
	)	
Proposals to Reform the Commission's	)	GEN Docket No. 90-264
Comparative Hearing Process to	)	
Expedite the Resolution of Cases	)	
	)	

TO: The Full Commission

**COMMENTS OF LAUREN A. COLBY ON BEHALF  
OF VARIOUS IDENTIFIED PARTIES**

Lauren A. Colby, on behalf of the parties identified in Exhibit 1, attached, hereby respectfully submits the following comments in this proceeding:

1. Attached and marked Exhibit 1 is a list of persons, each of whom is an applicant to the Federal Communications Commission for a construction permit for a new FM or TV broadcast station. Each application, filed by the parties identified, was filed prior to July 1, 1997. Each application was filed pursuant to a public notice stating that if more than one application was filed

for the facility in question a hearing would be held to select the winning applicant. Each applicant has invested at least \$7500.00 in legal, engineering, consulting and other expenses associated with its application. Each applicant who has already gone through a comparative hearing has invested at least \$50,000.00 in its application.

2. Now, through the Balanced Budget Act of 1997, the Congress has amended the Communications Act to provide that a winner will be selected by competitive bidding with the proceeds going to the U.S. Treasury. Each of the identified parties hereby objects to the selection of a winner by competitive bidding. Congress and the FCC having initially announced that the winners were to be selected only after a hearing, each of the identified parties is entitled to a hearing. Congress cannot change the rules in the middle of the game. To do so violates the rights of each applicant to due process of law. U.S. v. Winstar Corporation, 116 S.Ct. 2432 (1996). The proposed auction deprives each applicant of its entire investment in its application and constitutes a taking of property without due process, in violation of the "takings clause" of the Fifth Amendment. The mere reimbursement of any government fees, which may have been paid, is wholly insufficient to make the applicant whole; indeed, no sum of money is sufficient to fully compensate an applicant for the loss of its right to a hearing. Finally, each applicant has been deprived of adequate notice and hearing in violation of well-established Constitutional principles.

3. All of the identified parties are in the process of attempting to reach private settlements in their respective comparative proceedings. However, it appears that in each proceeding there is always one other applicant who simply refuses to settle. The comments of the identified parties are

submitted without prejudice to the rights of each party to reach an amicable private settlement should that prove possible.

January 6, 1998

Law Office of  
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P.O. Box 113  
Frederick, MD 21705-0113

Respectfully submitted,

LAUREN A. COLBY

By: 

Lauren A. Colby  
Counsel to Affected Parties

## EXHIBIT 1

### AFFECTED PARTIES

Thomas F. Beschta  
Thomas Benns  
Stacy Brody  
William B. Wachter  
Michael J. Benns  
James W. Lawson  
John D. Strelitz  
Innovative Broadcasting Corporation  
GNHC, Inc.

William E. Benns, III  
Ronald Bishop  
Robert O. Copeland  
Hulester Russell  
Heidi Damsky  
David Hartley  
David L. Shepherd  
John R. Miller  
Straus Communications

### CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 17<sup>th</sup> day of January, 1998, to the offices of the following:

Mass Media Bureau  
Video Services Bureau  
F.C.C.  
1919 M Street, N.W.  
Room 702  
Washington, D.C. 20554

Audio Services Division  
F.C.C.  
1919 M Street, N.W.  
Room 302  
Washington, D.C. 20554

Office of General Counsel  
F.C.C.  
1919 M Street, N.W.  
Room 610  
Washington, D.C. 20554

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Traci Maust